

Standard Oil: *Ascent and Assessment*



The Benefits of History

- Better Understanding of the Past on its Own Terms
- Better Understanding of Modern Economic and Legal Issues
 - Point of comparison, contrast
 - Source of useful additional questions, perspectives to consider
- Help to Inform Modern Decision Making

Perspectives and Insight

- Business Historians
- Legal Historians
- Intellectual Historians
- Economists
- Legal Scholars
- Other Scholars and Commentators

Earlier Antitrust Episodes in General; Standard Oil Story in Particular

- Great deal to tell us
- “Freedom from a falsely imagined past”
- Insight into how many of our current mainstream ideas first came to be established in antitrust law

- Simultaneously, insight into how
 1. Early antitrust thinking was not simply a less sophisticated early form of neoclassical economic thought;
 2. Variations from modern economic analysis found in earlier antitrust analysis do not simply reflect the power of “non-economic” concerns uninformed by any systematic theoretical outlook

3. Much of early antitrust debate, legislation, lawyering, and judicial decision making was influenced by a different kind of theoretical outlook

That embraced as a part of, and not simply alongside of, its economic analysis,

Simultaneous concerns for

- Individual Opportunity
- Freedom of Contract
- Efficiency
- Economic Progress and Prosperity
- Fair Distribution of Wealth and
- Political freedom;

All to be promoted through a process of largely “non-discretionary” judicial decision making

- Obviously, a more encompassing antitrust vision
 - Contra more thorough-going modern belief in the “inevitability of tradeoffs”

Ascent and Challenge

- **The Rise of Standard Oil**
 - Origins



Standard Oil Refinery
– Cleveland, Ohio 1870

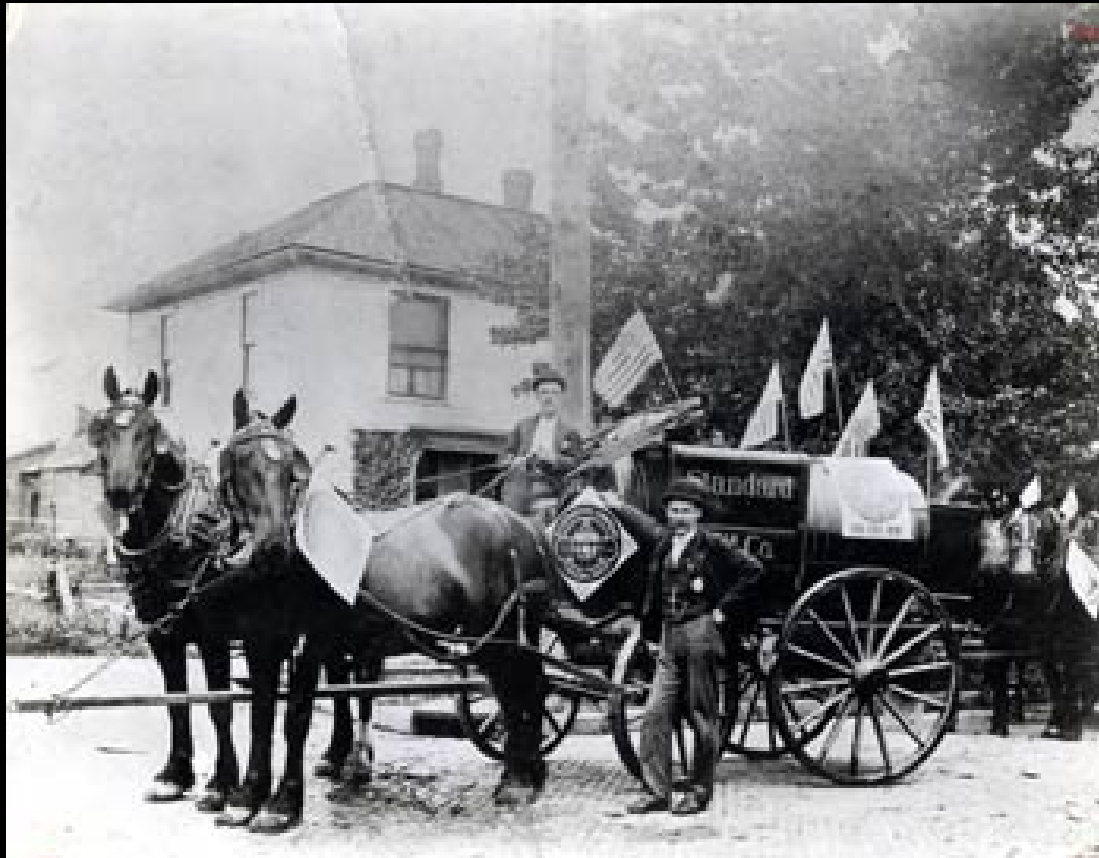


- Products
- Cartel Activity and Relations with Railroads
- The Cleveland Acquisitions
- Later Acquisitions

- The 1879 Trust

- The 1882 Trust

- Movement into Crude Oil Production
- Dominance in Pipe Line Transportation
- Expansion of Retail Marketing



- Expansion of Product Offerings
- Dissolution of the 1882 Trust Under Ohio State Challenge
- Establishment of the Standard Oil Company of New Jersey as a New Jersey Holding Company

- **Standard Oil's Position –
Export Trade**

- **Standard Oil's Position – Domestic Trade**



• The Federal Antitrust Challenge



- Filed 1906



Position of the United States

- Conspiracy to Monopolize First Formed in 1870
- Continued to the Time of Suit through Three Periods
 - 1870-1882
 - 1882-1899
 - 1899-Time of Suit



Position of the United States

- **Evidence Stressed**
 - Acquisitions and Combination
 - Market Shares
 - Profits
 - Increases in the Prices of the Principal Products

Position of the United States

–Other Means Used to Monopolize Commerce

- Railroad Rate Discrimination
- Control of pipe lines and pipe line discrimination
- Contracts with independent refiners
- Unfair competition . . .

Position of the United States

- Unfair competition
 - Local Price Discrimination/Predatory Pricing
 - Secret market intelligence gathering and espionage
 - Operation of secret bogus independent companies

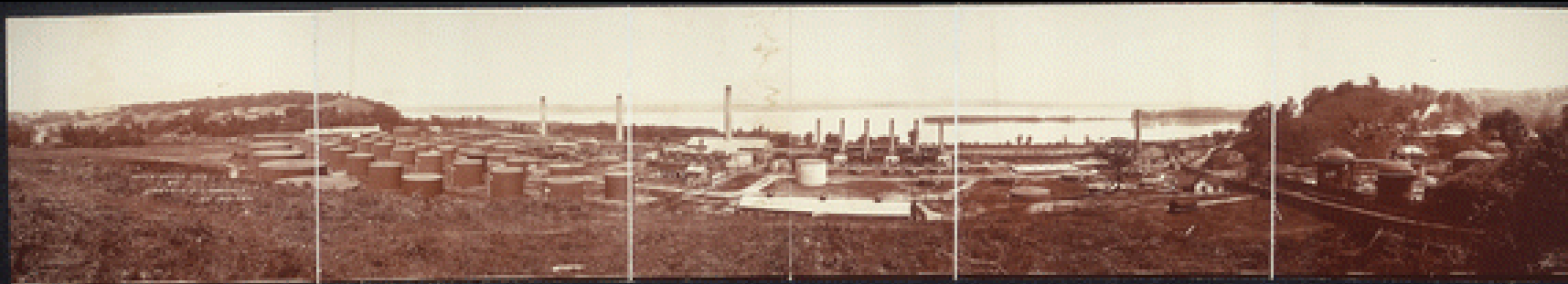
Position of the United States

- The Trust Agreements of 1879 and 1882 were in unreasonable restraint of trade, tended to monopoly, and were void at common law
- The corporate combination achieved through the establishment of Standard Oil of New Jersey as a holding company was void under
 - Sherman Act § 1
 - Sherman Act § 2

Position of the United States

- Remedy





The Case in Hindsight

General Questions

- What was wrong and what was right about the government's position?
- How might the case be approached differently today?

Scholarly Perspectives

- Remedy
- Was Standard Oil a monopolist?
 - If so, what was monopolized?
- What were the Bases of Standard Oil's Preeminence?

- Economies of Scale or Other Efficiencies
- Mergers and Acquisitions
 - Uncoerced
 - Coerced
- Bad Acts
 - Predatory Pricing
 - Other
- Enforcement of a Railroad Cartel
- Pipe Line Dominance

Questions and Implications

